

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Fagen, Inc., a Minnesota corporation;
Fagen Engineering LLC, a Minnesota
limited liability company,

Plaintiffs,

Case No. 13-cv-2833 (JNE/JJG)
ORDER

v.

Homeland Renewable Energy Inc.,
a Delaware corporation,

Defendant.

Plaintiffs Fagen, Inc., and Fagen Engineering LLC brought this action for breach of contract and unjust enrichment against Defendant Homeland Renewable Energy Inc. After the Clerk entered the Defendant's default, ECF No. 15, the Plaintiffs moved for the entry of default judgment under Federal Rule of Civil Procedure 55, ECF No. 16. A hearing was held on the motion on April 3, 2014. Phillip Ashfield, Esq. of Stinson Leonard Street LLP appeared on behalf of the Plaintiffs. No one appeared for the Defendant. For the reasons discussed below, the Court will grant the Plaintiffs' motion.

"Upon default, the factual allegations of a complaint (except those relating to the amount of damages) are taken as true, but 'it remains for the court to consider whether the unchallenged facts constitute a legitimate cause of action, since a party in default does not admit mere conclusions of law.'" *Murray v. Lene*, 595 F.3d 868, 871 (8th Cir. 2010) (quoting 10A Charles Alan Wright et al., *Federal Practice and Procedure* § 2688 (3d ed. 1998)). *See Marshall v. Baggett*, 616 F.3d 849, 852 (8th Cir. 2010) ("[W]hen a default judgment is entered, facts alleged in the complaint may not be later contested."). "[I]t is incumbent upon the district court to

ensure that ‘the unchallenged facts constitute a legitimate cause of action’ prior to entering final judgment.” *Marshall*, 616 F.3d at 852-53.

Briefly summarized, the Complaint alleges that the Defendant borrowed \$2 million from Plaintiff Fagen, Inc. and \$1 million from Plaintiff Fagen Engineering LLC in 2010. The parties negotiated extensions of the promissory notes associated with the loans. Under the terms of these extensions, the balance of the \$2 million loan came due in July of 2013 and the balance of the \$1 million loan came due in March of 2013. However, the Defendant has failed to repay the amounts it owes. The parties agreed that the notes would be governed by Pennsylvania law, and the unchallenged factual allegations state legitimate claims against the Defendant for breach of contract. *See General State Authority v. Coleman Cable & Wire Co.*, 365 A.2d 1347, 1349 (Pa. 1976) (elements of cause of action for breach of contract).

As for damages, “[i]t is a familiar practice and an exercise of judicial power for a court upon default, by taking evidence when necessary or by computation from facts of record, to fix the amount which the plaintiff is lawfully entitled to recover and to give judgment accordingly.” *Stephenson v. El-Batrawi*, 524 F.3d 907, 915 (8th Cir. 2008) (quoting *Pope v. United States*, 323 U.S. 1, 12 (1944)). “The need for a hearing [on damages] is within the sound discretion of the district court under Fed. R. Civ. P. 55(b)(2)(B).” *Id.* at 916.

Here, the proper damages award can be computed from the facts in the record. *See Ferrer v. Trustees of Univ. of Pa.*, 825 A.2d 591, 609-610 (Pa. 2002) (discussing damages for breach of contract). Plaintiff Fagen, Inc. asserts that it is entitled to recover \$3,380,742.78 from the Defendant, while Plaintiff Fagen Engineering LLC seeks damages of \$1,646,127.76. These amounts represent the total outstanding principal owed by the Defendant under the respective notes along with the applicable interest and penalties through March of 2014, and they are

consistent with the Court's damages calculations.¹ Thus, having reviewed the evidence submitted by the Plaintiffs to prove their damages, the Court concludes that they are entitled to these amounts.

Based on the files, records, and proceedings herein, and for the reasons discussed above,
IT IS ORDERED THAT:

1. Plaintiffs' Motion for Default Judgment [ECF No. 16] is GRANTED.
2. Judgment is ENTERED against Defendant Homeland Renewable Energy Inc. and in favor of Plaintiff Fagen, Inc. in the amount of \$3,380,742.78.
3. Judgment is ENTERED against Defendant Homeland Renewable Energy Inc. and in favor of Plaintiff Fagen Engineering LLC in the amount of \$1,646,127.76.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: April 3, 2014

s/Joan N. Ericksen
JOAN N. ERICKSEN
United States District Judge

¹ For Plaintiff Fagen, Inc., the unpaid balance on the original \$2 million loan was \$2,704,001.57 as of 7/5/2012 and is subject to an interest rate of 15% per annum. *See* Note/Exhibit A, ECF No. 1-1 at 1; Extension of Promissory Note Dated July 5, 2010/Exhibit D, ECF No. 1-1 at 6.

For Plaintiff Fagen Engineering LLC, the unpaid balance on the original \$1 million loan was \$1,265,452.05 as of March 4, 2012 and is subject to a 15% per annum interest rate as well as a 5% penalty interest rate. *See* Note/Exhibit B, ECF No. 1-1 at 3; Extension of Promissory Note Dated March 4, 2010/Exhibit G, ECF No. 1-1 at 12.